UNITED
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AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 830

Case No. 929: ANIH

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, Vice-President, presiding; Mr. Mikuin Leliel Balanda, Vice-President; Mr. Mayer Gabay;

Whereas, on 3 January 1996, Clement O. Anih, a former staff member of the United Nations Children's Fund (hereinafter referred to as UNICEF), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 14 June 1996, the Applicant, after making the necessary corrections, again filed an application requesting, inter alia, the Tribunal to order:

"...

(4) ... UNICEF to rescind their purported termination of my appointment and ... to reinstate me into the service, paying me arrears of all my entitlements up to and including the date of such reinstatement and thereafter as they become due.

(5) ... UNICEF to pay me compensation in the sum of $300,000 (Three hundred thousand US dollars) for the injury sustained by me in the event that the Secretary-General decides to pay me compensation. ...

...

(6) Any other orders or declarations that the Tribunal may deem appropriate."

Whereas the Respondent filed his answer on 26 September 1996;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNICEF on 1 May 1992, on a two year fixed-term contract, as Secretary in the Programme Section of UNICEF, in Kaduna, Nigeria, at the GS-4, step I level. His contract was not renewed beyond its expiration date of 31 May 1994, on grounds of misconduct.

On 30 April 1993, the Zonal Programme Officer at the UNICEF Office in Kaduna, wrote to the Chief of Operations at the UNICEF Office in Lagos, concerning the theft of six cartons of Toyota Hilux spare parts and medicine tablets from the UNICEF store. The Zonal Programme Officer attached to his memorandum a report of an investigation carried out by three UNICEF staff (hereinafter the Investigation Report). The Investigation Report stated that a Security Guard had "noticed suspicious movement" of the Applicant and the driver of the vehicle who left the office premises after loading cartons from the store. The report, signed on 30 April 1993, concluded that "[the Applicant] has been involved in stealing office property". The Zonal Programme Officer recommended that the Applicant be dismissed with "immediate effect".

The driver of the car, in a statement made for the investigation, reported that, on two occasions, he had been asked by the Applicant to help transport cartons from the store to the Applicant's house. The driver had asked the Applicant what was in the cartons but was told not to question a "superior officer". The driver was asked to repeat his statement in front of the Applicant, who denied any involvement.

On 11 May 1993, the Senior Operations Officer, Lagos, wrote to the Applicant, suspending him with pay until further notice and asking him to defend himself, in writing, against the allegations of theft. The Applicant responded on 18 May 1993, stating that he had been targeted for victimization by his supervisor in retaliation for

applying for another position in the Organization without first consulting her. The Applicant submitted additional explanations in his defense on 19 July and 19 August 1993. Attached to the latter memorandum, the Applicant provided a statement of the driver, dated 6 August 1993, to the effect that the allegations of misconduct against the Applicant had been planned by a Finance Assistant with the Kaduna Zonal Office in order that the Finance Assistant might gain full responsibility for Administration and Finance.

On 3 September 1993, the UNICEF Representative in Lagos informed the staff of UNICEF that he had established an ad hoc disciplinary committee (ad hoc JDC) to investigate the loss of spare parts and mectizan medicine tablets in the Kaduna Office. The ad hoc JDC submitted its report to the Representative on 24 September 1993. It concluded that the Applicant was "the number one suspect" in the theft of spare parts and recommended his summary dismissal. It did not reach a conclusion with respect to the medicine tablets.

In a letter dated 2 May 1994, the Deputy Executive Director (Operations) transmitted to the Applicant an excerpt of the Committee's report pertaining to him, noting from its findings and supporting documentation:

> "(a) That several persons testified that they saw you removing cartons from the store,
>
> (b) That during the questioning you stated that you had never taken the store keys, yet in your statement of 7 May, you contradicted yourself by admitting to having taken the keys,
>
> (c) That the supplier who was questioned as to whether you tried to sell him spare parts, while denying the allegation, did say that he inflated the invoice amounts to benefit you."

She further informed the Applicant as follows:

> "On the basis of all the evidence presented, I have decided, on behalf of the Executive Director, to accept the

> recommendation of the JDC [Joint Disciplinary Committee] that you be separated from service in accordance with staff regulation 10.2 and staff rule 110.3(vii). We note that your fixed-term appointment expired on 30 April 1994. Therefore, your separation will be effective c.o.b. [close of business] the date you receive this letter."

On 27 June 1994, the Applicant appealed the foregoing decision to the Deputy Executive Director (Operations), requesting further review. On 14 October 1994, the Director, Division of Personnel, replied that the decision was final.

On 14 June 1996, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The composition of the ad hoc JDC reflected prejudice and was calculated to frustrate the Applicant's ability to defend himself.

2. The ad hoc JDC, by denying the Applicant access to one of the witnesses against him, infringed the Applicant's right to a fair hearing.

Whereas the Respondent's principal contentions are:

1. The Secretary-General has broad discretion with regard to disciplinary matters. This includes determinations of what constitutes misconduct warranting dismissal.

2. The Secretary-General's decision to dismiss the Applicant was a valid exercise of his discretionary authority.

3. The Applicant's dismissal was preceded by an investigation which afforded him a reasonable opportunity to present his version of events.

The Tribunal, having deliberated from 11 July to 1 August 1997, now pronounces the following judgement:

I. On 30 April 1993, the Zonal Programme Officer mentioned for the first time that the Applicant had been "reportedly involved in [the] theft [of a] case ... [of] six cartons of vehicle spare parts". He held some preliminary enquiries together with two of his colleagues and concluded that "unless there [is] any other concrete evidence in favour of [the Applicant] I would recommend dismissal from service with immediate effect". From then on, the investigation was widened, culminating in the establishment of an ad hoc Joint Disciplinary Committee (ad hoc JDC) to investigate also "the loss of spare parts and Mectizan tablets in Kaduna".

II. After an investigation, the ad hoc JDC recommended the Applicant's "summary dismissal for misconduct, illegal use of UNICEF vehicle, theft of documents and insubordination". The Respondent dismissed the Applicant and also the office driver (Cf. Judgement No. 756, Obimba (1996)) as the persons most closely associated with the loss or theft of the six cartons of vehicle spare parts. The driver's appeal before the Tribunal was rejected on 16 July 1996.

III. The Applicant's main contention is that the evidence on which the Respondent separated him from service was wholly inadequate and often tainted. He further argues that he was not given a suitable opportunity to defend himself, to which he was entitled. He also asserts that he was a victim of a conspiracy in which his supervising officer was implicated; he objects, therefore, to the inclusion of this officer as a member of the ad hoc JDC.

IV. Having examined all the evidence before it, the Tribunal rejects the Applicant's allegation that the inclusion of his supervising officer in the ad hoc JDC was prejudicial to his interests. The Applicant produces no evidence to support this claim. Furthermore, he did not object to the composition of the ad hoc JDC when it was first established.

V. As regards the evidence before the ad hoc JDC, the Tribunal considers that some of it is contradictory. Nonetheless, the Tribunal has not found any convincing evidence of a conspiracy, and much less of a vendetta. Some of the deficiencies in the evidence arose, it seems, from the unsatisfactory arrangements and working conditions in the UNICEF office at Kaduna. The ad hoc JDC has referred to these deficiencies and the need to correct them. Besides, the evidence by individual witnesses was often coloured by their own motivation and frequently by significant lapse of time. The Respondent has acknowledged that the report of the ad hoc JDC is not as comprehensive as the professional reports of joint disciplinary committees established at Headquarters, which are serviced by a full-time secretary, who often is a lawyer, and staff. Despite all these shortcomings, the Tribunal holds that the conclusions reached by the ad hoc JDC are reasonable and are supported by the evidence, notwithstanding the limitations and the circumstances in which it worked. The Tribunal finds no reason to disagree with any of the conclusions reached by the ad hoc JDC.

VI. The Applicant's complaint that he was not afforded a suitable opportunity to defend himself or to cross-examine witnesses may appear, at first glance, to be justified, inasmuch as the Applicant was not fully informed in time of the course of developments in his case. Even allowing for the fact that some of the delays were of his own making, the Tribunal notes that, in some instances, the Applicant could legitimately believe that he was denied the full protection of the Staff Regulations and Rules because of the Administration's failure to adhere strictly to them. However, the Tribunal considers that these lapses were minor and occasional. In the view of the Tribunal, they did not fundamentally affect the interests of the Applicant.

VII. The shortcomings and deficiencies referred to above could invite criticism or even admonition of the Respondent. Nonetheless, the Tribunal finds that the course of justice was neither deflected nor perverted by the way in which the findings of the ad hoc JDC were reached, or by the Respondent's action based upon them. In this context, the Tribunal notes the numerous and frequent letters the Applicant addressed to the Respondent giving his version of what transpired. The Respondent's replies, as well as the files before the Tribunal, indicate that the concerns of the Applicant on various matters were addressed and attended to. In sum, the Tribunal holds that the Applicant had many occasions to present his case fully and that his rights and opportunity to defend himself were not infringed upon by the Respondent in reaching his decision to separate him.

VIII. In view of the foregoing, the Tribunal rejects the application in its entirety.

(Signatures)

Samar SEN
First Vice-President, presiding

Mikuin Leliel BALANDA
Second Vice-President

Mayer GABAY
Member

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN
Executive Secretary